

AMENDED SPRING PRAIRIE PLANNED UNIT DEVELOPMENT AGREEMENT

PARTIES AND PURPOSE: This Agreement was originally made and entered into the 3rd day of December, 2001 by and between the State of Montana Department of Natural Resources & Conservation (hereinafter “DNRC”), with its office and principal place of business located at 2250 Highway 93 North; and the City of Kalispell, a municipal corporation (hereinafter “City”), with its office and principal place of business located at 312 - 1st Avenue East, Kalispell, Montana 59901. Pursuant to the request of DNRC, and consensus of the City, by Ordinance 1486 dated the 15th day of December, 2003 and by recommendation of City staff [KPUD-03-01] dated the 13th day of November, 2003 the Agreement is hereby amended as follows:

W I T N E S S E T H:

WHEREAS, The State of Montana Department of Natural Resources & Conservation is the owner of certain real property located in Flathead County, Montana, which is further described in Exhibit “A” attached hereto and made a part hereof, and which hereinafter is referred to as the “Subject Property”; and,

WHEREAS, The Subject Property is subject to a request for annexation and initial zoning; and,

WHEREAS, DNRC is desirous of applying a Planned Unit Development (PUD) overlay to city zoning classifications; and,

WHEREAS, In order to allow the PUD, assure the installation of Infrastructure within the “Subject Property”, permit connections to the CITY utility systems, and prescribe the permitted uses within the requested zoning areas, the parties hereto determine it is to be in their best interests to enter into this Planned Unit Development Agreement; and,

WHEREAS, (i) Use and development of the property is subject to the provisions of the Section 36 Neighborhood Plan, jointly adopted by the City of Kalispell and Board of County Commissioners in 1999; (ii) the adopted plan is further subject to an environmental impact statement performed under the Montana Environmental Policy Act; (iii) and further subject to the Record Of Decision (ROD) which establishes additional parameters to development and (iv) a Memorandum Of Understanding (MOU) establishes policy for taxation, local review of projects, and other development considerations; and,

WHEREAS, DNRC is requesting annexation of the property into the City of Kalispell with City of Kalispell Zoning classifications of B-5 to be applied to the Mixed Commercial POD, R-5 to the Mixed Professional POD, and R-4 to the Mixed Residential POD; and,

WHEREAS, It is desirous by DNRC to further restrict the allowances of these City of Kalispell Zoning classifications to the property and to provide additional standards for development consistent with the Plan by applying a PUD overlay to the underlying zoning classifications.

I. DEFINITIONS

1.01 Agreement shall mean this Planned Unit Development Agreement between DNRC, and CITY.

1.02 Building Department shall mean the Building Department of the City of Kalispell.

1.03 CITY shall mean the City of Kalispell, Montana.

1.04 City Council shall mean the City Council of the City of Kalispell, Montana.

1.05 Developer shall mean DNRC, its agents, designees and assigns.

1.06 Director of Public Works shall mean the Director of Public Works of the City of Kalispell, Montana.

1.07 Easement(s) means the Easement(s) described in §3.04 of this Agreement.

1.08 Section 36 Plan means the Neighborhood plan approved by the City of Kalispell and Board of Flathead County Commissioners and as amended by the Record of Decision issued by DNRC on August 11 , 2001, all pertaining to the School Trust Lands located in Section 36, T29N-R22W, Flathead County Montana.

1.09 Mixed Commercial means that portion of the Subject Property generally lying in the NE¼ of Section 36 and as more particularly described in Exhibit B.

1.10 Mixed Professional means that portion of the Subject Property lying generally in the NW ¼ of Section 36 and as more particularly described in Exhibit C.

1.11 Mixed Residential means that portion of the Subject Property lying generally in the SW¼ of Section 36 and as more particularly described in Exhibit D.

1.12 Sports Fields means that portion of the property generally located in the SE ¼ of Section 36 and already zoned P-I and previously annexed into the City of Kalispell.

1.13 Subject Property or Subject Area means the real property described in Exhibit A.

1.14 Memorandum of Understanding means a 3-party agreement entered into by DNRC, City of Kalispell, and Board of Flathead County Commissioners dated April 19, 2001.

1.15 Final Environmental Impact Statement means a document released as a Final Environmental Impact Statement (FEIS) by DNRC on July 26, 2001 relative to proposed actions associated with school trust lands located in Section 36, Township 29 N, Range 22 W, P.M.M., Flathead County Montana.

1.16 Record of Decision means a decision document issued by DNRC on August 11, 2001, that identifies selective alternatives related to a land use plan for Section 36 and a proposal to lease land in section 36 to construct a business and technology park.

1.17 Substantial Completion shall mean that substantially all of the work to be performed in the development shall have been performed and the Infrastructure constructed in each Phase are usable for their intended purposes, as certified by the Director of Public Works and the Building Department, which certification shall not be unreasonably withheld or delayed.

1.18 Infrastructure means all water, sewer and storm drainage systems that will be dedicated to the public and have been installed in accordance with the Montana Public Works Standard Specifications and the City of Kalispell Standards for Design and Construction. In addition, Infrastructure shall include roads that are designed and constructed in accordance with the Montana Public Works Standards for Design and Construction. Said Infrastructure shall consist of various public utilities and dedicated streets. The Infrastructure required to serve developed facilities and to provide connection to future phases of development will be identified concurrent with subdivision review. Notwithstanding any of the foregoing, excluded from these terms are: building construction; parking lot paving; final landscaping in and around the buildings and parking lot(s); lighting; signage; and the service lines to each building.

1.19 Section 36 means land owned by the State of Montana as School Trust Lands (Section 36, T 29 N, R 22 W, P.M.M., Flathead County Montana) and administered by the DNRC and as more precisely described by Exhibit A.

1.20 School Trust Lands mean lands granted to the state of Montana by the Enabling Act of February 22, 1889 (and subsequent acts) for support of the common schools.

1.21 DNRC means State of Montana/Department of Natural Resources and Conservation.

1.22 Applicant shall mean any party assigned by the DNRC that has been provided development rights by DNRC for any portion of the Subject Property. Applicants shall be granted all appropriate and necessary rights to allow Applicant to obtain approvals for and construction of such property designated by DNRC.

II. GENERAL DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

2.01 Development Overview

(A) Subject to the other provisions of this Agreement, any use/development of the Subject Property occurring after the effective date of this Agreement shall substantially conform to and comply with the provisions of the PUD Kalispell Zoning of Section 36 and this Agreement with the documents and drawings annexed hereto.

(B) It is agreed between the parties, that the development of the Subject Property will include the following:

- (1) A land use map, which identifies three land use pods and a proposed alignment of internal collector roads to be built in phases as development occurs (Exhibit E);
- (2) A list of permitted uses associated with each land use pod;
- (3) A phasing schedule of development;
- (4) Description of Infrastructure as described in the FEIS for use in planning and bonding purposes;
- (5) Annexation of the Subject property into the city limits of Kalispell;
- (6) Extension of city water and sewer services by DNRC or its assigns to serve the developed facilities of the Subject Property;
- (7) Adherence to the Memorandum of Understanding jointly approved by the City of Kalispell, Flathead County, and DNRC; and
- (8) Compliance with the PUD zoning regulations and City of Kalispell Subdivision regulations.

(C) Development themes for each Land Use POD being annexed into the City of Kalispell are as follows:

- (1) Mixed Commercial: a district providing a variety of commercial industries are appropriate and where community design to minimize the appearance of strip commercial development is desirable, including restriction of allowable uses as might otherwise be permitted or conditionally permitted in the B-5 City of Kalispell zoning classification. Strip-type uses characterized by substantial outdoor storage and display of products, such as car lots and equipment and trailer sales are specifically excluded. Also specifically excluded as permitted uses are gaming/gambling establishments of any kind, including casinos. The range of permitted uses is intended to permit a variety of uses associated with the retail, professional services, or technology industries but does not necessarily limit or restrict opportunities for continued agricultural

operations or practices. However, technology uses are given priority consideration.

- (2) Mixed Professional: a district providing opportunities for development of offices, office parks, and compatible uses in a fashion that promotes clustering of uses and architectural control, including but not limited to all uses set forth in Kalispell Zoning Ordinance Classification R-5 and as otherwise modified by this Agreement. The phasing limitations anticipated by the Section 36 Neighborhood Plan would be modified to encourage development of schools and a resource agency office park in this POD.
- (3) Mixed Residential: a district providing opportunities for development of residential uses, offices, and other compatible uses in a fashion that promotes clustering of uses and architectural control, including but not limited to all uses set forth in Kalispell Zoning Ordinance Classification R-4 and as otherwise modified by this Agreement. A land exchange process will be encouraged to facilitate opportunities for private ownership and development of this POD. The phasing limitations anticipated by the Section 36 Neighborhood Plan would be modified to encourage development of schools in this POD.

(D) The creation of individual lots (or lease lots) will be subject to subdivision review concurrent with specific project proposals. Subdivision approval will verify compliance with the provisions of the PUD Agreement and covenants and identify requirements for extension of utility services. Bonding requirements to guarantee completion of the required infrastructure (roads, water, sewer, etc) will be accomplished via the subdivision approval process. The Infrastructure requirements as described in the FEIS may be referenced by the City in fixing any conditions for subdivision approval. Infrastructure improvements shall accommodate the needs of future development within each POD, such as planning for road, water, and sewer extensions beyond the immediate project area.

(E) General performance standards applicable to the Subject Property are as follows:

(1) Transportation and Parking

a General access to the commercial district beginning at West Reserve Drive and ending ½ mile south along U.S. Highway 93 shall be limited to no more than 3 approaches. Additional approaches south of the aforementioned area shall also be allowed as approved by the access-permitting agency. New approaches onto Reserve Drive, Stillwater Road, and Four Mile Drive shall generally be limited to a minimum spacing distance of 1,300 feet or as otherwise authorized by

the access-permitting agency;

b. All uses shall have direct access from the internal road system. No direct access to a particular use shall be permitted from the Highway or the other perimeter public roads as listed in Ia, above;

c. The collector road system shall be as generally shown by Exhibit E and as more precisely aligned by subsequent engineering analysis, use patterns, and subdivision review;

d. All roadway improvements shall be built in accordance with city of Kalispell road design standards;

e. Roadway design shall include provisions for landscape boulevards and sidewalks. A bike and pedestrian path system shall generally follow the internal collector road system with outlet connections to path systems external to the property, including connection to the proposed Meridian/ Four Mile Drive bike path;

f. Lighting shall be shielded and directed downward; and,

g. Parking space requirements and general parking lot design shall be guided by the parking and loading provisions of the City of Kalispell Zoning Regulations, except as noted herein. Parking lots in the Mixed Commercial and Mixed Professional PODS may extend to within 5 feet of any lease lot boundary, provided a 5 foot wide exterior landscape buffer adjoins the extended parking lot. In locations where the parking lot adjoins a landscaped common area, no setback from the lot/lease boundary is required.

(2) Landscaping

a. Landscaping, to include lawn, shrubs, trees, and/or rock gardens, shall comprise all open spaces within the boundaries of the parent lease lot. Parking lots may extend to within 5 feet of any lot/lease lot boundary.

b. Buildings in the Mixed Commercial and Mixed Professional PODS shall be set back a minimum of 20 feet from the side, front, side corner, and rear of the parent (not sublots) lot/lease lines.

c. Parking lots serving multiple businesses where the area for

parking spaces exceeds a lineal length or width of 270 feet shall include internal landscape islands having minimum dimensions of 9 feet by 18 providing one island for every 15 contiguous parking spaces when such space are located internal to the parking lot (not abutting the perimeter boundary to the parking lot or store front). The number of contiguous cars per island may increase up to a limit of 20 provided that the associated landscape island proportionally increases in width (i.e. a row of 20 cars is a 33% increase over the maximum 15 space standard, therefore the island width would increase 33%).

d. A landscape boulevard having a minimum width of 4 feet shall parallel both sides of the collector roads shown on the neighborhood plan map. Street trees acceptable to the City of Kalispell shall be planted at 40 to 50 foot intervals as appropriate.

e. Sidewalks or pathways shall connect developed properties from roadside sidewalks (see 1e, above) to building entrances in a continuous manner.

f. All landscaped areas shall be irrigated and routinely maintained by Developer or its assigns; and

g. An irrigated landscape corridor of at least 20 feet in width shall parallel the right of way of U.S. Highway 93 adjacent to the commercial POD. The corridor should include undulating topography and have a mix of tree plantings with a ground cover of predominately lawn. A similar landscape common corridor, 10 feet in width shall parallel West Reserve Drive and be completed in phases to correspond with development activity.

h. Landscaped beds and parking lot landscaping islands shall be mulched with either naturally decomposing material (bark) or small gravel mulch (1"-3" rounded river rock mulch is strongly discouraged). In high traffic areas, an urban design approach to islands (concrete with trees in grates or patterned/ colored concrete type designs) is encouraged but not required.

3. Building and [lease] Lot Parameters

a. Buildings should not exceed 35 feet above the final grade in the Mixed Residential POD, 40 feet in the Mixed Professional POD and 45 feet in the Mixed Commercial POD. Such height

limitation may be exceeded in the mixed commercial POD by issuance of a conditional use permit.

b. Applied finishes of buildings shall be predominately earth tone;

c. Buildings may have an orientation towards the internal road system however, if the building “fronts” in another direction, four sided architecture shall prevail and the side facing the internal street shall contain front architecture features and treatment .

d. Ground and wall signs as limited below may be used to identify a single use lease lot or multiple uses within common lot/lease area. Ground signs shall have natural earth tones and not be fabricated primarily of exterior plastic, Plexiglas or similar materials. The ground sign may have internal lighting or sign mounted external lighting. Shielded lighting may be provided from ground-mounted fixtures directed towards the sign face. Ground signs may have a concrete or similar mounting base but in no situation shall the total height of the sign exceed the size and height standards for freestanding signs as specified in Table 1 of Section 27.24.080 (1d) of the Kalispell Zoning ordinance. In addition, freestanding signs shall be capped at 24 feet in total height and 120 square feet in total surface area. There shall be no more than a total of 3 free standing ground signs, one for phase one, one for phase 2 and one for phase 3. The freestanding signs shall be constructed as presented in exhibit 1A and shall only advertise the name of the primary tenant of the phase and the name of the development. Wall signs may have internal lighting and shall not exceed a sign face area as provided in the City of Kalispell Zoning Ordinance.

e. In situations involving a commercial or office town home, condominium or subplot design, only the parent lot is eligible for a common ground sign. Individual uses are eligible for a wall sign if the use has outside frontage. A common wall sign may be appropriate to identify a building having multiple tenants. A common signage plan that involves other types of building signage, such as canopy signage, may be permitted subject to the review and approval of the City of Kalispell Site Development Review Committee. Residential uses shall be permitted signage as otherwise permitted by the City of Kalispell zoning regulations. All other provisions of the Kalispell sign regulations shall apply subject to the restrictions set forth herein;

f. The exterior appearance of commercial buildings with “backs” facing, adjacent, and visible from Highway 93 shall contain architectural elements found on the “front” portions of the buildings. Walls and surface planes should be broken up in such a manner as to create a visual interest, avoiding monotony. Notwithstanding anything contained herein to the contrary, facades that do not have frontage exposure to US Highway 93 should have appropriate elements that create visual interest;

g. Lease lots with single or multiple buildings shall have sufficient area to accommodate the size of the proposed building(s) and required on-site parking plus sufficient area for landscaping exterior to the building and parking lot (see 2a & 2b, above);

h. A single lease lot may contain buildings with multiple tenants and/or uses or be comprised of multiple attached or detached buildings. In such situations, landscaping, parking, and internal access shall be common to all buildings within the lease lot; and

i. Commercial buildings or combination of buildings on a single lease lot exceeding 60,000 sq. ft. total gross floor area (where no sub-lots have been established) shall be set back a minimum distance from U.S. Highway 93 as follows: Phase 1 – 300 feet, Phase 2 – 225 feet and Phase 3 – 150 feet.

4. Extension of Services

a. All required services shall be underground; and

b. Annexation and provision of city services shall be subject to the approval of the City of Kalispell.

5. Growth Management

a. Development of property shall conform to the general provisions of the neighborhood plan consistent with Section 27.22.120, KZO.

b. Phase I (Exhibit B) is the Mixed Commercial Pod.

i. Clustering of uses is preferred to encourage sharing of roads, parking, utilities, and common

design. However, separation of uses, such as “large” from “small” or “commercial” from “industrial” may be appropriate within the Commercial POD.

ii. Development design is intended to avoid a “strip” commercial appearance with specific exclusion of certain uses.

iii. The area of the Mixed Commercial POD will be extended to include the entire NE ¼ of Section 36 and the extended area will be held as a reserve area for expansion of technology uses beyond the original POD area as described by Exhibit B-1.

iv. That portion of the Mixed Commercial POD lying southerly of the by-pass alignment will offer leases primarily to business (offices) and technology uses and compatible commercial uses, such as small retail convenience uses (delis, restaurants, copy shop, “wired” motel, etc). Retail stores exceeding 10,000 square feet per store front will not be permitted. No retail will be permitted until at least 20,000 square feet of non-retail space is leased and operating within the POD.

v. Expansion of business and technology uses into the expansion area will not be permitted until at least 60% of the originally-sized Mixed Commercial POD is leased for development.

vi. If business and technology uses fail to achieve a 40,000 square foot floor area leasing threshold within 5 years following execution of this agreement, or if the proposed business and technology park as proposed by Hampstead Partners fails to proceed within 2 years following the execution of this agreement, then the original Mixed Commercial and Mixed Professional boundaries (Exhibit B) shall be restored and the retail restrictions removed to permit all the uses listed in Section 2.02 of this Agreement. The City agrees that if the proposed business and technology park, as proposed by Hampstead Partners fails to proceed within 1 year following the execution

of this agreement, it shall provide marketing assistance to the Developer to achieve the goals set forth above.

vii. If business and technology uses fail to achieve a 120,000 square feet floor area threshold within 10 years following the execution of this agreement, then the boundaries of the original Mixed Commercial POD (Exhibit B) shall be restored and the retail restrictions removed to permit all the uses listed in Section 2.02 of this Agreement.

c. Phase II (Exhibit C) is the Mixed Professional POD.

i. Clustering of uses is preferred to encourage sharing of roads, parking, utilities, common design, and to prevent a scattered development pattern within the POD.

ii. Infill of developed uses, with some exceptions, such as schools, agricultural facilities, and equestrian facilities, shall be from east to west. The "Section 36 Neighborhood Plan Map" also designates an area along Stillwater Road that is excluded from nonagricultural development until the year 2010. Schools and a natural resource agency campus may build at any time within the Mixed Professional POD, including the deferred development area.

iii. Development of non-agricultural uses shall be restricted to no more than 20% of this POD until at least 50% of the Mixed Commercial POD (Exhibit B) is leased for development. School, agency campus, and equestrian facilities may be permitted at any time and are not subject to the 20% calculation.

iv. That portion of the NE 1/4 of Section 36 lying within the Mixed Professional POD may be added to the area of the Mixed Commercial POD as described in (b) above. The amended legal description of the Mixed Commercial POD is described in Exhibit C-1. The infill pattern of the Mixed Professional POD would need to reflect this

reserve area for the future expansion of the Mixed Commercial POD.

d. Phase III is the Mixed Residential POD.

i. Clustering of uses is preferred to encourage sharing of roads, parking, utilities, common design, and to prevent a scattered development pattern within the POD.

ii. Infill of developed uses, with some exceptions, such as schools, agricultural facilities, and equestrian facilities, shall be from south to north or from east to west. The “Section 36 Neighborhood Plan Map” also designates an area along Stillwater Road that is excluded from non-agricultural development until the year 2010. Schools may build at any time within the Mixed Residential POD, including the deferred development area.

iii. Development of non-residential and non-agricultural uses shall be restricted to no more than 20% of this POD until at least 50% of the Mixed Professional POD is leased for development or 50% of this POD is occupied by residential uses, whichever comes first. This limitation does not apply to public facilities.

6. Supplementary Regulations

a. Accessory uses shall be permitted as appropriate to a particular use and as generally set forth in Section 27.22.020 et seq, KZO. Subsections 2a and 2b of that section of the KZO shall generally apply to residential uses within any portion of Section 36. Subsections 2d and 2e, KZO, would apply as appropriate to non-residential uses in any portion of Section 36.

b. The greenbelt provisions of Section 27.22.050 shall be interpreted and applied concurrent with subdivision review.

c. If a single lot/lease lot contains buildings with multiple tenants and/or uses or is comprised of multiple attached or detached buildings, landscaping, parking, and internal access shall be common

to all buildings within the lot. This provision shall not apply to lots approved for single family dwellings.

d. The creation of sublots (including for purposes of leasing) may be appropriate in situations involving residential, commercial, office, and industrial uses.

e. All other provisions of the Chapter 27.22 of the City of Kalispell Zoning Regulations shall apply.

(F) Covenants: Draft covenants are attached as Exhibit F. Prior to construction of any building improvements or concurrent with subdivision review, final covenants shall be completed and recorded. The City shall review the covenants for consistency with this PUD Agreement and shall revise the covenants as necessary to comply with the conditions of approval of the PUD. Notwithstanding the foregoing, the applicant may prepare their own separate Easements, Covenants, Conditions and Restrictions, (ECC&R's) between the DNRC and the Applicant.

2.02 Uses

(A) The uses allowed in the PUD shall be those uses generally allowed under the following zoning classifications and as otherwise limited herein:

- 1) Mixed Commercial POD — Zoning Classification B-5
- 2) Mixed Professional POD — Zoning Classification R-5
- 3) Mixed Residential POD — Zoning Classification R-4

(B) The Mixed Commercial POD is limited to the following permitted uses.

- 1) Agriculture (farming, livestock, riding academies, stables, horticulture, nursery, etc)
- 2) Automobile service (fuel, wash, mechanical repair, tires, etc)
- 3) Barber & beauty services, massage parlor, etc
- 4) Cultural facilities (museums, theaters, libraries, etc)
- 5) Educational facilities (private and public schools, colleges, universities, trade schools, music, dance, theater lessons, educational research or incubator facilities, etc)
- 6) Financial services and institutions (banks, credit unions, mortgage companies, savings & loans, etc)
- 7) Healthcare (medical offices/clinics, dental/orthodontic, in-patient/outpatient facilities, pharmacies, diagnostic services and treatment, etc)
- 8) Office, professional/governmental

- 9) Park, private or public (may include open space, trails, passive or developed facilities, etc)
- 10) Public assembly buildings (assembly halls, coliseums, stadiums, convention center, etc)
- 11) Public or quasi public buildings/structures (fire/law enforcement stations, community /homeowner facilities, water tower, electrical distribution/stations lines, telephone relay equipment, etc)
- 12) Radio/television broadcast stations, internet companies, etc
- 13) Recreational facilities, outdoor/indoor, private/public or quasi-public, commercial/non-commercial (tennis courts, bowling alley, golf course, ice skating arenas, ball fields, swimming pool, zoo, amusement park, community center gym, health/fitness club, driving range, etc)
- 14) Research, technical, or business parks (may include indoor assembly of parts, limited outdoor storage, product distribution)
- 15) Restaurant (deli, bakery, fast food, sit-down, beverage shop, drive through, etc) and incidental casino use. Incidental casino use is limited to 5% of the gross floor space of a fully bonifide, freestanding restaurant facility (as opposed to a gas station–restaurant-casino arrangement for example). The casino floor plan must be visually separate from the primary use of the building as a restaurant. There can be no outside indication of a casino or gaming activity including signage in a window, on the building or the premise and no excessive lighting or attraction to indicate such a use. This includes but not limited to reference to words or symbols associated with the gaming industry such as gambling, gaming, poker, chance, casino, live betting, daily take or pot, card game, dice, \$, etc.
- 16) Retail facilities/enterprises (clothing, convenience, food, sporting, book, office products, drug, computer, phone, hardware, tire, plumbing, electrical, furniture, art, household, gifts, mall, warehouse discount, etc)
- 17) Tourist accommodations (motels, hotels, bed & breakfast, campground, recreational vehicle park, etc)
- 18) Veterinary services and facilities
- 19) Worship buildings (churches, synagogues, etc)

(C) The Mixed Professional POD is limited to the following permitted uses.

- 1) Agriculture (farming, livestock, riding academies, stables, horticulture, nursery, etc)
- 2) Automobile convenience (fuel, wash, & convenience retail, only, i.e. no mechanical service)
- 3) Barber & beauty services, massage parlor, etc
- 4) Cultural facilities (museums, theaters, libraries, etc)
- 5) Educational facilities (private and public schools, colleges, universities, trade schools, music, dance, theater lessons, educational research or incubator facilities, etc)
- 6) Financial services and institutions (banks, credit unions, mortgage companies, savings & loans, etc)
- 7) Food/grocery store
- 8) Healthcare (medical offices/clinics, dental/orthodontic, in-patient/outpatient facilities, pharmacies, diagnostic services and treatment, etc)
- 9) Office, professional/governmental
- 10) Park, private or public (may include open space, trails, passive or developed facilities, etc)
- 11) Public or quasi public buildings/structures (fire/law enforcement stations, community /homeowner facilities, water tower, electrical distribution/stations lines, telephone relay equipment, etc)
- 12) Radio/television broadcast stations, internet companies, etc
- 13) Recreational facilities, outdoor/indoor, private/public or quasi-public, commercial/non-commercial (tennis courts, bowling alley, golf course, ice skating arenas, ball fields, swimming pool, zoo, amusement park, community center gym, health/fitness club, driving range, etc)
- 14) Restaurant (excludes food drive-up service but permits drive-up beverage service and take and bake establishments and sit-down facilities)
- 15) Retail enterprises less than 3000 square feet in gross floor area (excludes tavern, gaming, or casino facilities/operations)
- 16) Veterinary services and facilities
- 17) Worship buildings (churches, synagogues, etc)

All other uses otherwise listed as permitted or conditionally permitted in the R-5 zoning classification may be considered only as conditionally permitted uses in the Mixed Professional POD.

(D) The Mixed Residential POD is limited to the following permitted uses.

- 1) Agriculture (farming, livestock, riding academies, stables, horticulture, nursery, etc)
- 2) Educational facilities (services/facilities for pre -K or K-12 only)
- 3) Office, professional/governmental
- 4) Park, private or public (may include open space, trails, passive or developed facilities, etc)
- 5) Public or quasi public buildings/structures (fire/law enforcement stations, community /homeowner facilities, water tower, electrical distribution/stations lines, telephone relay equipment, etc)
- 6) Recreational facilities (limited to non-commercial facilities)
- 7) Residential (day care or day care centers; dormitories or fraternities (college); dwellings: single family; duplex; or multi-family; manufactured home park (class “A” only); Nursing homes and elder care; retirement home, etc)
- 8) Worship buildings (churches, synagogues, etc)

All other uses otherwise listed as permitted or conditionally permitted in the R-4 zoning classification may be considered as conditionally permitted uses in the Mixed Residential POD.

(E) Property development standards for the Mixed Commercial POD relative to (1) minimum lot area, (2) minimum lot width, (3) minimum yards, (4) maximum building height, (5) permitted lot coverage, (6) off-street parking, and (7) maximum fence height shall be consistent with Section 27.17.040, City of Kalispell Zoning Ordinance (KZO) unless otherwise specified herein by the listed performance standards or by language within the adopted neighborhood plan (see Section 27.22.120, KZO).

(F) Property development standards for the Mixed Professional POD relative to (1) minimum lot area, (2) minimum lot width, (3) minimum yards, (4) maximum building height, (5) permitted lot coverage, (6) off-street parking, and (7) maximum fence height shall be consistent with Section 27.08.040, City of Kalispell Zoning Ordinance (KZO) unless otherwise specified herein by the listed performance standards or by language within the adopted neighborhood plan (see Section 27.22.120, KZO).

(G) Property development standards for the Mixed Residential POD relative to (1) minimum lot area, (2) minimum lot width, (3) minimum yards, (4) maximum building height, (5) permitted lot coverage, (6) off-street parking, and (7) maximum fence height shall be consistent with Section 27.07.040, City of Kalispell Zoning Ordinance (KZO) unless otherwise specified herein by the listed performance

standards or by language within the adopted neighborhood plan (see Section 27.22.120, KZO).

(H) DNRC or Applicant shall require all proposed ~~uses~~ developments and buildings to be subject to architectural review in accordance with a separate Agreement between the DNRC and the Applicant. A staff representative from the City of Kalispell shall serve on the committee in an advisory capacity at its discretion. All structures shall conform to the relevant city of Kalispell Building Department regulations. Architectural consistency between building types with each POD is desired. (Since development of this property is likely to expand over several decades and styles change, some flexibility in design is desirable and expected.) The covenants establish architectural review authority for all proposed uses.

- 1) Landscape features are an important component of the developed properties. Landscaping is intended to complement the travel ways, parking lots, buildings, lots, and common areas (see 2.01E (1), (2), and (3) of this Agreement).
- 2) Landscape materials shall be comprised of ornamental and native plant species common to the general community. Boulevard trees shall be consistent with the approved species list of the City of Kalispell.
- 3) Exterior lighting along travel ways and parking lots should be directed downward. Ornamental lighting along pathways and parking lots is encouraged. Low intensity lighting (exterior) may be appropriate to add architectural interest to certain features of a building face or building signage. Lighting directed upward to illuminate tree canopies or building overhangs may provide attractive accents.
- 4) Signage on buildings is intended to be complimentary to the building design and add architectural interest to the structure. Common signage, including entrance signage, is intended to be low profile and comprised of materials complimentary to the building structures (see Section 2.01 E (3) of this Agreement).
- 5) Building design is an important consideration in helping to define the quality of the built environment. Each land use POD allows a mix of different land use types. Landscaping and other common features will provide one form of community linkage and identity. The other linkage will be building architecture. In general terms, all commercial buildings should seek to have architecturally enhanced facades and broken roof and wall lines to minimize monotony of design. Expectations of building design common to all land use types will include the following components.

a. Exterior wall colors should harmonize with the site and surrounding buildings. The pre-dominate tone on building faces should tend toward warm earthy hues, whether in the natural patina or weathered color of the wall surface itself or the color of the paint stain or other coating. The color of concrete products on building faces should be not be achieved from painting the surface. The use of materials such as wood, brick or stone for trim material is encouraged.

b. Large, rectangular masses should be avoided by incorporating offsets in the wall and roof. A change in the plane of the walls, changing the direction or providing some variety in the roof form gives diversity and visual interest. Facades greater than 120 feet in length shall have variation and interest in the wall. Among other things, major landscaping, significant tree planting, use of color or building materials or architectural treatments would be in order.

c. Commercial buildings (non-residential) should place an emphasis on entry. Entries should be a prominent component of the building face by providing an architectural covered or recessed entry with modified roof accent and increased usage of windows and trim.

d. All residential roofs must be pitched. Commercial roofs may be pitched or flat. Brightly colored roof material is prohibited as are reflective metals. All roof mechanical systems shall be shielded from view from 5'-0" above ground plane of US Highway 93 as seen at a 90 degree angle or incorporated into architectural features. Roof design shall incorporate architectural relief if building foot print size is greater than 20,000 square feet.

e. Extensive use of windows is encouraged to break up building planes or add architectural interest to building facades or other walls facing public view.

f. Franchise architecture ~~is~~ may be subject to modification to achieve the sign, color, and building style objectives set forth by this agreement. Colors and materials of franchise architecture shall be similar to or compatible with the materials and colors of Spring Prairie Center as identified

in a separate Agreement between the DNRC and the Applicant.

g. Architectural elements of the front of the building shall be incorporated into the back of buildings when the back of the building is visually accessible from U.S. Highway 93.

2.03 Ownership

The State of Montana may retain ownership of the Subject Property or leased parcels for the development and use by third parties. This Agreement is binding on the owners, successors and assigns inclusive of lessees of the property described in Exhibit A attached hereto.

2.04 Relationship to Zoning Ordinance

Except as specifically modified or superseded by this Agreement and attached drawings or the PUD Application of DNRC, the laws, rules, and regulations of the City of Kalispell governing the use and development of land and buildings, including the Kalispell Zoning Ordinance as it now exists or as amended, shall apply to the Subject Property.

2.05 Effectiveness

The provisions of this Agreement shall become effective simultaneously with approval of the PUD Ordinance.

III. SITE CONDITIONS

3.01 Development

The Subject Property shall be developed in substantial compliance with the Section 36 Plan and as further described by the Record of Decision issued by DNRC on August 10, 2001 and as set forth in this Agreement.

3.02 Access

(A) Primary access to the Subject Property shall be as shown on the land use map (Exhibit E) of the Plan.

(B) DNRC has completed a comprehensive traffic impact study, which identifies all expected traffic impacts and proposals for mitigation.

(C) DNRC or its assigns or Applicant will obtain all required access permits from the Montana Department of Transportation and/or Flathead County Road Department

and CITY prior to development of any uses that require access to a particular public road.

(D) DNRC agrees to be responsible for all required traffic turn lanes, traffic signals, and other regulatory signs and signals directly pertaining to ingress and egress to and from U.S. Highway #93, West Reserve Drive, Stillwater Road and Four Mile Drive indicated by the traffic study.

(E) All primary and secondary entrances shall be completed to CITY standards prior to occupancy permits being issued for any site utilizing said entrances for access.

(F) Emergency fire, ambulance, police and public vehicle access shall be at all times available through said primary and secondary access without impediment.

3.03 Internal Roadways and Sidewalks

(A) DNRC acknowledges that the development of the Subject Property includes development, at DNRC's expense, of internal roadways providing access to the lots within the PUD.

(B) DNRC agrees that the interior roadways within the PUD shall be constructed to CITY standards with Curb, gutter, and sidewalks , in accordance with the proposed Site drawings and applicable City Standards for Design and Construction for local and collector streets. A paved pedestrian/bike path will generally follow the collector roads .

(C) DNRC agrees that they will dedicate all internal streets and sidewalks to the City of Kalispell upon completion.

3.04 Sewer and Water

(A) Sanitary sewer service to the Subject Area shall be accomplished by an extension of the existing Municipal sewer system.

(B) Water service to the Subject Property shall be accomplished by extension of the existing Municipal water system.

(C) If a well is used on the premises, it shall not in any way be connected to the CITY water supply system without prior consent and approval by the City of Kalispell.

(D) All sanitary sewer and water mains shall be designed and installed in accordance with the City of Kalispell's Standards for Design and Construction.

(E) All utility Infrastructure located within the subject Property shall be dedicated to the public upon completion.

(F) DNRC agrees to obtain all necessary easements for the extension of water and sewer to the Subject Property. In addition, DNRC will grant to CITY any and all easements necessary for CITY to perform maintenance of water and sewer lines installed pursuant to the Agreement.

(G) In the event that CITY requires installation of water and/or sewer lines larger than those required to service the needs of DNRC as set forth in its total Infrastructure requirements delineated at the reference 2.01(B)(4), then CITY shall pay only those costs associated with the increased utility main sizing or extension.

(H) In no event shall this Agreement be construed as to require CITY to complete installation of Infrastructure and other improvements on the Subject Property, or on any portion thereof, during any phase of development of the Subject Property.

(I) Following completion of installation of the sewer and water lines on the Subject Property by DNRC, it is agreed that the said utility lines shall be maintained by CITY in accordance with CITY maintenance policy and standards. However, service lines to individual buildings on site shall remain under private ownership and shall be privately maintained.

3.05 Storm Water

(A) Storm Water retention, drainage, and disposal shall be designed in accordance with regulations of the CITY and the Montana Department of Environmental Quality, and such other City, State and Federal “storm water requirements” as are in existence and made applicable to the property at the time of the construction of any improvement.

(B) Storm Water will not be retained, treated or discharged off-site.

3.06 Site Grading

(A) Prior to commencement of site grading, DNRC agrees to obtain an Air Quality Construction and Demolition Permit from the Director of Public works, and to comply with the terms and conditions of said Permit during construction including hauling of material to and from the site.

3.07 Fire Suppression

(A) Prior to the Building Department issuing any permit for any foundation or building within the PUD, the Fire Chief for CITY must certify that DNRC has supplied a fire site access plan for the Subject Property and an engineered internal fire suppression system for the buildings to be constructed on the Subject Property, which will be in accordance with the Uniform Fire Code and will be acceptable to the Fire Chief.

(B) DNRC agrees to install hydrants, water mains, supply and storage units in accordance with City of Kalispell Standards and to obtain approval thereof prior to construction from the City of Kalispell Fire Chief.

3.08 Landscaping

(A) In addition to the performance standards related to landscaping, subdivision review will consider the landscaping and common area features of all proposed development.

(B) Street trees will be placed at 40-foot intervals along both sides of the internal roadways except where they immediately abut a parking lot island or planter or abut building fronts. Street trees are to be a minimum of 2 -1/4 inch caliper at planting.

(C) Landscaping along Highway 93 and West Reserve Drive will include street trees placed at 50-foot intervals, which are a minimum of 2-1/4 inch caliper at planting.

(D) The overall landscape plan shall be coordinated with the Kalispell Parks and Recreation Director as to the exact size and location of the plantings and the species lists. This plan shall be attached hereto as an addendum.

(E) All refuse areas shall be screened from public view.

IV. CITY SEWER/WATER CONNECTION FEES

4.01 Connection Fee Schedule

(A) Connection fees for connection to the CITY Water and Sewer utility will be determined in accordance with City Standards and fee schedules for connection fees, in effect at the time of the application for a building permit.

(B) DNRC, or its successors and assigns which own the property at the time of applying for a Building Permit, shall pay the connection fees associated with the utility connections at the time of obtaining the Building Permit for each structure.

This provision is to assure that the fees are paid at the time of applying for a Building Permit and is not to be construed as to prohibit DNRC from requiring reimbursement or advance payment of the cost from any potential tenant or purchaser.

(C) DNRC may be entitled to reimbursement of a portion of the costs of installation and extension of water and sewer utilities from future users who connect to extended water and sewer facilities. If DNRC anticipates the need for reimbursement of cost, DNRC's engineer shall prepare a preliminary design and report that details the proposed facilities and the estimated proposed reimbursable costs and will submit said design and report to the CITY for review and concurrence in advance of construction. Costs shall be recovered through a developer's extension agreement and will be subject to the following conditions.

- 1) No reimbursement will be allowed for any costs associated with meeting the utility requirements for development of the Subject Property. These costs shall be determined by DNRC's engineer and shall be submitted for review and concurrence by the Director of Public Works. Said costs shall be the actual costs of construction, inclusive of engineering and inspection costs, and shall be submitted as specified within thirty (30) days of substantial completion of the work.

- 2) No reimbursement will be allowed for any costs of extension of water and sewer facilities, or increases in size thereof, for which the CITY has agreed to provide reimbursement as described elsewhere in this agreement.

- 3) Costs associated with extensions of water and sewer facilities to future users shall be determined by DNRC's engineer and shall be provided to the Director of Public Works for review and concurrence that said costs are appropriate for reimbursement. Said costs shall be the actual costs of construction, inclusive of engineering and inspection costs, and shall be submitted as specified within thirty (30) days of substantial completion of the work.

- 4) A developer's extension agreement shall be prepared by DNRC's engineer and submitted to the Director of Public Works for review and concurrence. The agreement shall identify the costs to be reimbursed, the properties benefitted by the extended utilities, and the proportionate cost to be reimbursed by each benefitted property upon connection to the extended utilities. The agreement shall identify the recommended method for apportioning reimbursable costs between the benefitted properties. Said method shall be the same for all

properties. The term of this agreement shall not exceed a period of seven (7) years.

5) Upon concurrence, the Director of Public Works shall submit the proposed developer's extension agreement to the Kalispell City Council for approval.

6) Future extensions by the CITY of utility facilities covered by this PUD agreement shall not be subject to the cost reimbursement outlined in this section.

V. AMENDMENT OR MODIFICATIONS OF AGREEMENT

5.01 Amendment or Modification Procedures

This Development Agreement may be amended or modified only by application of DNRC, in accordance with the procedures set forth herein. Applications for amendment or modification may be made to the City of Kalispell Site Review Committee.

(A) Modifications of this agreement and the attachments hereto which are deemed by said Site Review Committee to be minor modifications shall require only the consent of the Site Review Committee and shall not require the consent of the City Council or any other public agency.

(B) All amendments and modifications of this Agreement, other than minor modifications, shall require the approval of the City Council.

(C) All applications for modifications or amendments of the Agreement shall be filed with the Site Review Committee and the Site Review Committee shall promptly, within 10 days, determine whether the modifications are major or minor.

(D) The Site Review Committee shall make its determinations with respect to any application for minor modifications subject to this Section within 15 days after it determines the application to be subject to said minor modification.

(E) If the amendment or modification requested is of such a nature as to require approval of the City Council, the Site Review Committee shall refer the matter to the City Council within fifteen (15) days after it determines the matter to require Council review.

(F) DNRC may appeal the decision of the Site Review Committee to the City Council, who may affirm, reverse or modify the site Review Committee decision.

VI. MISCELLANEOUS

6.01 Severability

In the event that any provisions of this Agreement shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Agreement shall continue to be of full force and effect.

6.02 Recordation

This Agreement shall be recorded in the Office of the Flathead County Clerk and Recorder.

6.03 Entire Agreement. Primacy

This Agreement and the attachments, exhibits, plans, and reports referenced herein constitute the entire Agreement between the parties and may only be amended as set forth herein. In the event during the term of this Agreement, there is a variance between the provisions of this Agreement and any drawing or document submitted prior to execution of this Agreement, this Agreement shall take precedence.

6.04 Integration

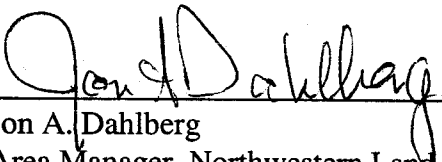
This Agreement, together with any attached exhibits and any addenda or amendments signed by the parties, integrates all negotiations and previous agreements between the parties and supercedes any other written or oral agreements or representations between the parties. This Agreement can be modified only in writing, signed by all parties hereto.

6.05 Binding Effect

This Agreement shall be binding upon and inure to the benefit of the respective parties, heirs, successors and assigns.

Dated this 2nd day of February, 2004.

DEPARTMENT OF NATURAL RESOURCES

By: 
Jon A. Dahlberg
Area Manager, Northwestern Land Office

CITY OF KALISPELL

Attest:

By: Chris A. Kukulski
Chris A. Kukulski
City Manager

By: Theresa White
Theresa White
City Clerk



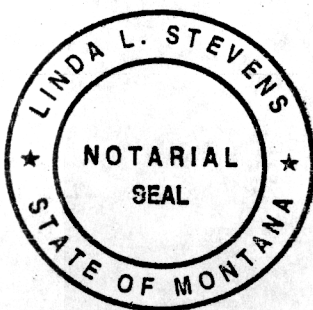
STATE OF MONTANA)
) ss.
County of Flathead)

On this 1 day of April, 2004, before me the undersigned, a Notary Public for the State of Montana, personally appeared Jon A. Dahlberg known to me to be the authorized representative for the Department of Natural Resources, the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same on behalf of the said entity.

K. Read
Notary Public for the State of Montana
Residing at Eureka
My Commission Expires 10-5-2006

STATE OF MONTANA)
) ss.
County of Flathead)

On this 1st day of April, 2004, before me the undersigned, a Notary Public for the State of Montana, personally appeared Chris A. Kukulski, known to me to be the City Manager for the City of Kalispell, and Theresa White, the City Clerk for the City of Kalispell, the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same on behalf of the City of Kalispell.



Linda L. Stevens
Notary Public for the State of Montana
Residing at Kalispell
My Commission Expires 12/30/06